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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**PLAINTIFFS OPPOSITION AND
OBJECTIONS TO DEFENDANT
INTELIOUS, INC. REQUEST FOR
JUDICIAL NOTICE**

Date of Hearing: October 17, 2011
Time of Hearing: 10:00 a.m.
Location: Courtroom 10D

Plaintiffs, by and through their undersigned counsel, Philip J. Berg, Esquire files the within Objections to Defendant Intelious, Inc.'s Request for Judicial Notice as the Documents requested Judicial Notice of are **not** public record and are in full dispute as they are **not** the documents portrayed by Defendant Intelious, Inc. and the accuracy of the documents are under dispute as the documents Intelious, Inc. is

1 requesting Judicial Notice of are **not** the documents Plaintiffs received as claimed
2 by Defendant Intelius.
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4 1. It is heavily disputed that Intelius Exhibit “1” to the Declaration of
5 Benjamin Nelson [“Nelson Decl”] is in fact the report that Orly Taitz obtained and
6 received on April 12, 2009. Orly Taitz did **not** have an Intelius account or
7 accounts with any of the Reed Defendants. *See* the Declaration of Charles Edward
8 Lincoln, III filed July 25, 2011, Docket No. [“DN”] 313.
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11 2. Exhibit “2” to Nelson’s Decl is under dispute as it is **not** the report
12 Plaintiff Lisa Liberi received on herself on April 10, 2010 through
13 www.intelius.com. *See* the Declaration of Lisa Liberi with the report she obtained
14 directly from Intelius, Inc. and the receipt for said report.
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16 3. Plaintiffs have **not** incorporated into their Complaint Intelius, Inc.’s
17 Terms of Service as falsely claimed by Intelius, Inc. *See* Intelius, Inc.’s Request for
18 Judicial Notice, pg. 1, ¶4.
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20 4. Nelson’s Decl. Exhibit “6”, Letter from Lisa Ostella, is asking for
21 copies of all reports supplied to third parties on behalf of her and her spouse. *See*
22 Nelson’s Decl., Exhibit “6”. Lisa Ostella’s letter is **not** simply asking for who
23 obtained her reports as stated by Benjamin Nelson on behalf of Intelius, Inc. and
24 their attorney’s. *See* Intelius, Inc.’s Request for Judicial Notice, pg. 2, ¶6.
25 Moreover, Plaintiff Lisa Ostella sent her letter with information that Intelius, Inc.
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1 demanded, which Mrs. Ostella believed would be kept in strict confidence.
2 Therefore, Plaintiffs Object to Intelius, Inc.'s and their attorney's
3 mischaracterization of Lisa Ostella's letter and the publication thereof.
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5 5. Plaintiffs Object to Intelius, Inc.'s supposed response referred to in
6 their Request for Judicial Notice on pg. 2, ¶7. Plaintiff Lisa Ostella never received
7 said letter. *See* the Declaration of Lisa Ostella.
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9 6. Intelius, Inc.'s "Frequently Asked Questions" are **not** incorporated
10 into Plaintiffs FAC referred to in Intelius, Inc.'s Request for Judicial Notice on pg.
11 2, ¶8.
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13 7. Plaintiffs Object to Intelius, Inc.'s statement to the Court on page 3,
14 paragraph 2, "*These documents available from Intelius' website are the proper*
15 *subject of judicial notice because they are incorporated into the First Amended*
16 *Complaint...*" This is untrue and nowhere in Plaintiffs First Amended Complaint
17 will any party find reference to Intelius, Inc. Terms of Service and/or Frequently
18 Asked Questions.
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22 8. Plaintiffs Object to Intelius, Inc.'s statement to the Court on page 3,
23 paragraph 2, "*Accordingly, the Court is authorized to take judicial notice of pages*
24 *made available to consumers performing searches through Intelius' website,*
25 *including Intelius' "Terms and Conditions" and "Frequently Asked Questions".*
26 Defendant Intelius, Inc. is attempting to mislead this Court and confuse the issues.
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1 The within litigation has nothing to do with Plaintiffs conducting searches or
2 Plaintiffs specific accounts with Intelius, Inc. Other than the fact, Intelius, Inc.
3 violated California's Information Practices, *Cal. Civ. Code* 1798, et seq. and
4 therefore are liable for damages and statutory damages as Plaintiffs Lisa Liberi and
5 Lisa Ostella were customers of theirs at the time their private data was disclosed.
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10 **I. ARGUMENT:**

11 9. **Not** only is Intelius, Inc. asking this Court to take Judicial Notice of
12 documents that are **not** incorporated into Plaintiffs FAC, they are attempting to
13 mislead this Court into believing documents they are providing are the genuine
14 documents, which they are **not**. Further, the documents are **not** of public record as
15 falsely claimed by Intelius, Inc.
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18 10. The documents Defendant Intelius, Inc. is requesting Judicial Notice
19 of are **not** public records. In fact, several of them contain full Social Security
20 numbers, dates of birth, home addresses, etc.
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22 11. It is well established, as a general rule, our Court's "may not consider
23 any material beyond the pleadings in ruling on a Federal Rules of Civil Procedure,
24 ["*Fed. R. Civ. P.*"] 12(b)(6) Motion." *Lee v. City of Los Angeles*, 250 F.3d 668, 688
25 (9th Cir. 2001). (internal citation and quotation marks omitted). Our Courts may,
26 consider materials that are submitted with and attached to the Complaint. *Id.* Our
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1 Court's may also consider unattached evidence on which the complaint
2 "necessarily relies" if: (1) the complaint refers to the document; (2) the document
3 is central to the plaintiff's claim; and (3) no party questions the authenticity of the
4 document. Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006); Lee, 250 F.3d at
5 688.
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8 12. Our Court's may also take Judicial Notice of "matters of public
9 record", Federal Rules of Evidence [*Fed. R. Evid.*] 201. See also Lee 250 F.3d at
10 689. Our Court's cannot however, take Judicial Notice of facts that may be
11 "subject to reasonable dispute". *Id.* at 689. To be more specific, our Court's may
12 **not**, on the basis of evidence outside of the Complaint, take Judicial Notice of facts
13 favorable to Defendants that could reasonably be disputed. See *Id.* at 689-90.
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16 13. The documents Defendant Intelius, Inc. is requesting Judicial Notice
17 of are under full dispute; are **not** public records; are **not** incorporated in or attached
18 to Plaintiffs First Amended Complaint and are outside of the pleadings.
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